

Resolution No.:	<u>18-980</u>
Introduced:	<u>December 5, 2017</u>
Adopted:	<u>December 5, 2017</u>

**COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND
SITTING AS THE DISTRICT COUNCIL FOR THAT PORTION
OF THE MARYLAND-WASHINGTON REGIONAL DISTRICT
IN MONTGOMERY COUNTY, MARYLAND**

By: District Council

SUBJECT: APPLICATION NO. H-119 FOR AMENDMENT TO THE ZONING ORDINANCE MAP, Francoise Carrier, Esquire, Attorney for the Applicant, Nichols Development Company LLC; OPINION AND RESOLUTION ON APPLICATION; Tax Account Numbers 08-00720560, 08-00711190, 08-00720558, 08-00711202, 08-00720718.

OPINION

Application No. H-119 requests reclassification of property from the R-90 and CRT C-0.75 R-0.25 H-35 to the TF 10.0 Zone. The Applicant is Nichols Development Company, LLC (Nichols or Applicant). The tract area of the property consists of approximately 2.57 acres of land located at 100 Olney Sandy Spring Road, 12 Olney-Sandy Spring Road, and 17825 Porter Road, Sandy Spring, Maryland. The property is further identified as Parcel P393, Tax Map JT42, Parcel P447, Tax Map JT42, Part of Parcel 395, Tax Map JT42, and Lots 2 and 3 of the Edward C. Thomas Subdivision (Tax Account Numbers 08-00720560, 08-00711190, 08-00720558, 08-00711202, 08-00720718) in the 8th Election District.

Nichols seeks to develop 20 townhouse units on the property. Staff of the Montgomery County Planning Department (Planning Staff or Staff) recommended approval of the application in a report dated May 12, 2017. Exhibit 23. The Montgomery County Planning Board recommended approval on May 30, 2017. Exhibit 28.

The Office of Zoning and Administrative Hearings held a public hearing on June 12, 2017. After the public hearing, it received correspondence and evidence from several individuals stating that the signs required to advertise the application had not been posted at the site. Exhibits 41. The Hearing Examiner scheduled a second hearing for September 11, 2017, over the Applicant's objection. Exhibits 49, 53, 59.

Shortly before the September 11th hearing, Nichols submitted two alternative Floating Zone Plans (FZPs), each intended to minimize or eliminate encroachments into the on-site stream valley buffer. Exhibit 72(c) and (d). The Hearing Examiner referred the alternative FZPs to Staff

of the Montgomery County Planning Department (Staff) for comment. Exhibit 75. Staff endorsed FZP A because it eliminated encroachments into the highest priority area of the stream valley buffer and enabled a larger, more useable configuration of contiguous open space. Exhibit 75(a). The September 11, 2017, public hearing proceeded as scheduled with testimony and evidence presented by those in support and opposition. Staff responded to questions posed by the Hearing Examiner regarding the scope of traffic review that would occur at the time of the preliminary plan application. Exhibit 88. All parties were given the opportunity to comment on Staff's response before the record closed on October 2, 2017. Exhibits 91-95. The Applicant provided final versions of the FZPs (with binding elements agreed to at the public hearing). Exhibit 92(d) and (e).

On November 8, 2017, the Hearing Examiner recommended approval of the application. *Hearing Examiner's Report and Recommendation (Report)*. To avoid unnecessary detail in this Opinion, the Report is incorporated herein by reference. Based on a review of the entire record, the District Council finds that the application meets the standards for approval contained in the 2014 Montgomery County Zoning Ordinance and State law. *Maryland Land Use Article, Code Ann.*, § 21-101(a)(4)(i).

SUBJECT PROPERTY

The subject property consists of 2.379 acres (site area) and is currently zoned R-90 and CRT C-0.75 R-0.25 H-35.¹ It fronts the south side of Md. 108 approximately 200 feet west of the intersection of Md. 108 and New Hampshire Avenue (Md. 650). The property is improved with one single-family dwelling. It slopes downward from Md. 108 to a stream valley buffer in the southern portion of the site. Exhibit 18(b). A perennial stream lies within the buffer. Exhibit 23, p. 16, T. 232, 259.

SURROUNDING AREA

The surrounding area, or the area most directly impacted by the development, must be identified in a floating zone case so that compatibility may be evaluated properly. The District Council agrees with the Hearing Examiner and Planning Staff that the area most directly impacted consists of land within a 1,500 radius of the subject property. From west to east, development includes Sherwood High School, single-family detached homes and townhouses, and auto-oriented commercial retail uses at the intersection of Md. 108/New Hampshire Avenue. An abandoned restaurant, formerly known as Sole D'Italia, is adjacent to the east. The majority of properties east of the intersection are larger lot single-family homes. The District Council finds that the surrounding area transitions in scale from lower intensity institutional uses and single family homes to the west to auto-oriented retail uses at the Md. 108/New Hampshire Avenue intersection. Properties to the east of the intersection are primarily single-family detached homes.

¹If the underlying zone is residential, the TF 10.0 Zone measures density by the property's "site area," as defined in Section 4.1.7.A.1 of the Zoning Ordinance. The current zoning is a mix of R-90, a residential zone, and CRT (Commercial Residential Town). In its Report, Staff treated the CRT-zoned portion of the property as a residential zone as well. Exhibit 23, p. 25. Thus, the site area is used to calculate density in this Resolution.

PROPOSED DEVELOPMENT/FLOATING ZONE PLAN

Nichols seeks to develop 20 4-story townhouse living units on the subject property. The density proposed is approximately 9 dwelling units per acre. Parking for the units is rear-loaded with a total of 40 spaces in garages and driveways. The alternative FZPs differ in two major respects. FZP A (1) removes most encroachments from the western side of the stream valley buffer except for those needed for Porter Road and (2) provides a larger contiguous area of open space. T. 151-152. FZP B removes all of the encroachments from both sides of the stream valley buffer, but the open space is divided into two smaller parcels. Exhibit 92(e); T. 152-154.

Binding elements limit the development to 20 townhouses. Exhibits 92(d) and (e). Building heights are limited to 40 feet, except for townhomes fronting on Md. 108, which are limited to 35 feet. *Id.*; T. 260. The Hearing Examiner found that the units south of Md. 108 will appear to be 30-35 feet high because the property slopes downward from the road. *Report*, p. 35. Another binding element requires the Applicant to provide landscape or other screening between the townhouses in the northwestern portion of the site and the single-family homes located adjacent to the western property boundary. Exhibit 92(d).

Nichols plans to develop a 6,800 square foot mixed use building on the adjacent property east of the site (i.e., the site of the abandoned restaurant). The mixed-use building will contain commercial retail on the first floor and three residential apartments above. T. 12, 106. The building is not part of this application, although information on the building was provided for context. A binding element on both alternative FZPs states that the three residential apartments in the mixed use building may fulfill the MPDU requirements for this project, if these are not provided on-site. Exhibits 92(d) and (e). The commercial building proposed has a total of 30 parking spaces, four above the Code requirements. T. 350; Exhibits 92(d) and (e). Because the grade slopes away from Md. 108, the majority of spaces in the mixed use building will be underground. T. 23.

NECESSARY FINDINGS

Zoning Ordinance §59-7.2.1.E. establishes the “Necessary Findings” the District Council must make for to approve a Floating Zone application. The District Council’s determination on each are set forth below.

A. Required “Necessary Findings” (§59-7.2.1.E.2.)²

For a Floating zone application the District Council must find that the floating zone plan will:

- a. substantially conform with the recommendations of the applicable master plan, general plan, and other applicable County plans;*

² One of the required findings applies only where a non-residential zone is sought for property that is currently zoned residential. See, §59-7.2.1.E.2.f. As the Applicant here requests a residential zone, the standard does not apply to this case and is not included in this Resolution.

1. *Land Use Objectives:* The property lies within the area covered by the 1998 *Sandy Spring/Ashton Master Plan* (Master Plan or Plan). It falls within one of two village centers designated in the Plan - the "Ashton Village Center." The Plan identified the village centers as one of the elements that form the rural character of the larger Sandy Spring/Ashton Area. These centers were to function as "identifiable centers of community activity." *Plan*, p. 4. The Plan encouraged revitalization and redevelopment of the centers with additional "community-serving" commercial uses on a small scale. It also supported retaining the "low- to moderate" residential density recommended by the 1980 Master Plan. *Plan*, p. 38. The small scale sought by the Plan is defined by urban design guidelines. *Plan*, pp. 31-32. These guidelines seek to create pedestrian connections, place parking out of view, and activate pedestrian and street frontages through front entrances and porches. *Id.* The Plan recommended adoption of an overlay zone that would permit additional flexibility to incorporate these elements in new development. *Id.*

For this property, the Plan recommended development of single-family detached homes at 1.5 to 5 dwelling units per acre in the R-90 Zone. A sliver of the property (in the CRT portion of the site) lies within property identified by the Plan as "Kimball's Market." The Plan recommended commercial expansion of Kimball's Market because it "contributes significantly to the sense of the community and village's character." *Plan*, pp. 38-39.

The introduction to the Plan notifies readers that master plans look ahead 20 years but generally need revision in ten years. *Plan*, p. vii. It also warns that, "the original circumstances at the time of plan adoption will change over time, and that the specifics of a master plan may become less relevant as time goes on." *Id.* The Applicant presented expert testimony that, as the specifics become less relevant, the development should further the Plan's more general goals for the Ashton Village Center. T. 230.

The District Council must interpret the Plan in the context of the goals it seeks to achieve and the manner in which it defines those goals. The Master Plan envisioned the village centers as to be centers of community activity. *Plan*, p. 4. The rural character of the village centers is based on the "small scale" of development, which is in turn defined by the design guidelines listed by the Plan. These guidelines encourage design of developments that facilitate interaction, or activity, among members of the community.

The District Council concludes that FZP A meets these guidelines, as did Planning Staff and the Hearing Examiner.³ Rear-loaded parking enables a larger, more useable configuration of open space, which encourages community interaction. Parking in the rear also facilitates active street fronts because entrances and porches face directly on sidewalks, roadways, and open space. FZP A offers a streetscape that will include walkable connections within the development and a pedestrian connection along Md. 108 to other areas of the community, including the mixed-use building.

The interpretation of "low to moderate" density must be read in context with changes that have occurred in the almost 20 years since adoption of the Plan. The density proposed here (i.e.,

³ The Hearing Examiner concluded that FZP B (Exhibit 92(e)) did not conform to the Master Plan's urban design guidelines because the open space is divided and less useable for the community. The District Council agrees for the reasons contained in the Hearing Examiner's Report.

around 9 units per acre) is now characterized as “low density” under the 2014 Zoning Ordinance. The Master Plan’s recommendation for R-90 Zoning supports a finding that the density proposed by this application fulfills the goals of the Master Plan, given the passage of time. The R-90 Zone is *not* a rural zone. Rather, it is one of the more intense single-family detached zones under both the 2004 and 2014 Zoning Ordinances. Thus, the Plan never envisioned the lowest densities here that are associated with the rural neighborhoods identified elsewhere in the Plan. The area the Plan recommended for the C-1 (commercial/office) Zone on the eastern side of the property has been rezoned to permit mixed use development under the CRT Zone, which may include multi-family units. Exhibit 23, p. 5; *Zoning Ordinance*, §49-4.1.5. These recommendations reinforce that the Plan did not intend a purely rural environment for the village centers.

The Applicant presented expert testimony that the 4-story townhouse is a new building type that meets an evolving market demand and enables better compliance with the Master Plan urban design guidelines. The height of the townhouses are mitigated not only by the design of the development, but by binding elements and the site’s topography. A binding element limits the height of the homes fronting Md. 108 to 35 feet, the maximum permitted in the R-90 Zone. The Applicant presented expert testimony that the property’s slope downward from Md. 108 will make the remaining homes appear to be between 30 and 35 feet in height. T. 259. The Council finds that FZP A conforms to the goals of the Master Plan.

2. *Environmental Objectives:* Environmental goals of the Master Plan encourage “undisturbed and completely forested stream buffers.” *Plan*, p. 67. The FZPs have evolved to balance protection of the stream valley buffer with superior design of the open space. *Compare*, Exhibits 33, 92(d), 92(e). Staff recommended approval of FZP Plan A because it provided more contiguous open space while minimizing encroachments into the higher priority area of the buffer. Exhibit 75(a). The Applicant presented expert testimony that Plan A provides more active recreational space, a better sense of community, and the formal character typical of a traditional village center, fulfill the land use goals of the Master Plan. Mitigation for the encroachment to the east side of the buffer (in Plan A) will likely improve the water quality of the stream. T. 269. The District Council finds that FZP A meets the Master Plan’s environmental goals.

b. further the public interest;

The “public interest” refers to the adequacy and connectivity of public facilities, as well as compliance with adopted County plans and policies. *Md. Land Use Code Annot.* §21-101.

The adequacy of road and transit infrastructure is discussed on Page 7 of this Resolution. There is sufficient right-of-way to build a right-turn lane if required by SHA and still provide street improvements, including sidewalk and street trees. T. 255.

Those in opposition presented some evidence that the Applicant’s preliminary stormwater management strategy would not adequately treat stormwater runoff from the site. The strategy initially submitted showed the storm drain connecting to a sewer manhole. Grades to the road containing the stormwater drain went uphill and could use gravitational flow. T. 181, 236, 240-241. Nichols acknowledged that the preliminary strategy incorrectly connected to a manhole, but submitted supplemental evidence that it could connect to a storm drain on Hidden Garden Lane by

placing pipes under the road, if necessary. T. 276; Exhibit 82(a).

The stormwater management concept plan need not be completed at the rezoning stage. The evidence shows that stormwater management can be treated in accordance with current regulations and the overflow may be released to an off-site facility. The District Council finds that there is sufficient evidence at the rezoning stage that public facilities will be adequate to serve the use.⁴

c. satisfy the intent, purposes, and standards of the proposed zone and requirements of this Chapter;

The District Council concludes that the application meets the intent, purposes, and standards of the proposed zone and the Zoning Ordinance, for the reasons explained in this Resolution (below) and in the Hearing Examiner's Report.

d. be compatible with existing and approved adjacent development;

The Council finds that the 4-story townhouses are a compatible transition between the adjacent single-family detached homes to the west and the commercial uses to the east. The Applicant presented expert testimony that the transition between the single-family homes along the property's western boundary and the townhomes will be compatible because both structures are oriented side to side and separated by a distance of 70-90 feet. T. 54. Binding elements mitigate the difference in height between the detached homes and townhomes. These require Nichols to (1) screen the townhomes from the single-family homes to the west, and (2) limit the height of the townhomes fronting Md. 108 to 35 feet. Townhomes south of those fronting the road will appear to be 30-35 feet high. Nichols presented expert testimony that the proposed mixed-use building on that site will be "contextually similar" to the townhouses.

Many residents expressed concern that traffic from the development would exacerbate delays and hazardous conditions caused by existing queues on Md. 108. Exhibit 80, T. 196, 213-214, 346. T. 196, 213-214, 346. The extended queues combined with the number of unsignalized intersections between Sherwood High School and the Md. 108/New Hampshire Avenue intersection make it difficult to enter and exit Md. 108. The Hearing Examiner found that queues in front of the property do exist and can create problems for residents trying to enter Md. 108.

The Applicant presented expert testimony that the number of vehicle trips generated by the townhouses (excluding the mixed-use building) is so small that its impact on queues would be statistically insignificant. T. 295. During the busiest peak hour, only approximately 4 trips, or one trip every 15 minutes, will be turning left from Md. 108 onto Porter Road. T. 297. Existing evening volumes are 1,300 vehicles in the evening peak hour. T. 295-296. Planning Staff has advised that they will require the Applicant to study the impact of both the residential and commercial portions of the development on eastbound queues at the time of preliminary plan. Exhibit 88. If, as represented by the Applicant, both the commercial and residential portions of

⁴ Uncontroverted evidence establishes that other public facilities (e.g., schools, police, fire, water and sewer) are adequate to support the use and the Council has already concluded that the application substantially conforms to the Master Plan. *Report*, pp. 21-30, 34.

the development are submitted as a single preliminary plan, the application will likely be subject to a full traffic study. Exhibit 92.

At this stage, the record does not contain a systematic analysis of the frequency and duration of the queues or whether there are sufficient gaps to enable traffic to enter Md. 108. *Report*, p. 29. The District Council finds that the Applicant has submitted sufficient evidence that the traffic from the townhomes only will not have a significant impact on existing conditions. The impact of the combined uses will be considered during the preliminary plan when these issues may be comprehensively addressed.

e. generate traffic that does not exceed the critical lane volume or volume/capacity ratio standard as applicable under the Planning Board's LATR Guidelines, or, if traffic exceeds the applicable standard, that the applicant demonstrate an ability to mitigate such adverse impacts;

This section requires the District Council to make a preliminary finding that transportation infrastructure will be adequate to support a proposed development. *Zoning Ordinance*, §59-7.2.1.E.2.e. The principal tool used by the County to evaluate the capacity of transportation facilities to handle a proposed development is Local Area Transportation Review ("LATR"). Properties that generate fewer than 50 person trips are exempt from the LATR traffic test. The District Council finds that the application is exempt from LATR review for the reasons stated by the Hearing Examiner.

B. The Intent of the Floating Zones (§59-5.1.2.)

The application must meet the intent for all floating zones, stated in §59-5.1.2 of the Zoning Ordinance:

- A. *Implement comprehensive planning objectives by:*
 - 1. *furthering the goals of the general plan, applicable master plan, and functional master plans;*
 - 2. *ensuring that the proposed uses are in balance with and supported by the existing and planned infrastructure in the general plan, applicable master plan, functional master plan staging, and applicable public facilities requirements; and*
 - 3. *allowing design flexibility to integrate development into circulation networks, land use patterns, and natural features within and connected to the property; and*

The District Council has already found that the proposed development furthers the goals of the Master Plan and is supported by adequate public facilities. The Applicant presented expert testimony that the building type and topography of the site have been used to accomplish the urban design goals recommended by the Master Plan, protect the highest priority area of the stream valley buffer, and provide a right-turn lane (if required) as well as streetscape improvements on Md. 108. The development satisfies this intent.

B. Encourage the appropriate use of land by:

- 1. providing flexible applicability to respond to changing economic, demographic, and planning trends that occur between comprehensive District or Sectional Map Amendments;*
- 2. allowing various uses, building types, and densities as determined by a property's size and base zone to serve a diverse and evolving population; and*
- 3. ensuring that development satisfies basic sustainability requirements including:*
 - a. locational criteria,*
 - b. connections to circulation networks,*
 - c. density and use limitations,*
 - d. open space standards,*
 - e. environmental protection and mitigation; and*

Staff concluded that the application met this intent by providing residential uses within walking distance of the village center and, if developed with the proposed mixed-use building, will serve the multiple needs of Ashton residents. Exhibit 23. The development incorporates newer building typology to introduce pedestrian friendly design and meet sustainability requirements. The District Council agrees with the Hearing Examiner and Staff that the application fulfills this objective for floating zones.

C. Ensure protection of established neighborhoods by:

- 1. establishing compatible relationships between new development and existing neighborhoods through limits on applicability, density, and uses;*
- 2. providing development standards and general compatibility standards to protect the character of adjacent neighborhoods; and*
- 3. allowing design flexibility to provide mitigation of any negative impacts found to be caused by the new use.*

The District Council has already found the development to be compatible with adjacent uses through urban design and binding elements that requiring screening and limit height. Additional binding elements limit both the uses and building types that may be developed. The application uses the design flexibility provided by the building type and Sandy Spring/Ashton Overlay Zone to achieve the urban design goals of the Master Plan. The Council finds that this standard has been met, as did the Hearing Examiner.

C. Prerequisites for Application (§59-5.1.3)

Both the Hearing Examiner and Planning Staff concluded that the application meets the prerequisites for a floating zone. *Report*, p. 37-38. The District Council agrees for the reasons stated in the Hearing Examiner's Report.

D. Purpose, Land Uses, and Building Types Permitted by the TF 10.0 Zone (Section 59-5.2)

Section 5.2.2. Purpose

The purpose of Residential Floating Zones is to:

A. allow flexibility in residential development, including site layout, lot size, and placement;

* * *

C. provide residential development that is compatible with the surrounding neighborhood.

FZP A incorporates the flexible standards of the Sandy Spring/Ashton Overlay Zone, building typology, and urban design guidelines of the Master Plan to generate superior site layout. It is compatible with the surrounding area defined by the Hearing Examiner. From the west, the area transitions from institutional uses and larger lot single family residential to two-story townhouses in the PD-5 Zone and smaller residential dwellings in the R-90 Zone. Auto-oriented commercial uses are to the immediate north and east of the property. The height of the townhomes fronting Md. 108 are limited to 35 feet and the remaining homes will appear to be between 30 and 35 feet. Exhibits 92(d) and (e), *Zoning Ordinance*, §4.4.8.B.3. Townhouses already exist in the surrounding area, although not of the same building type. The building type proposed accomplishes many of the Master Plan's guidelines for the village centers by reducing surface parking, consolidating open space, and creating a walkable streetscape along Md. 108, all of which contribute to the compatibility of the proposed development.

E. Development Standards for the TF 10.0 Zone (Section 59.5.2.5)

The District Council finds that the application meets all of the development standards of the TF 10.0 Zone for the reasons set forth in the Hearing Examiner's Report. *Report*, pp. 39-40.

F. General Requirements (Article 59-6)

E. General Requirements

1. Parking, recreation facilities, screening, and landscaping must be provided under Article 59-6 as required for the Euclidean zone that establishes uses under Section 5.2.3 for each applicable residential or commercial area.

The residential townhomes have 40 parking spaces in rear-loaded garages and driveways, the minimum required by the Zone. Some in opposition expressed concern that these would be insufficient when townhome residents hosted visitors. The Applicant's experts suggested that overflow parking could be provided through a shared parking agreement with the mixed use building or a pedestrian connection to adjacent property owned by the Applicant on New Hampshire Avenue. The District Council agrees with the Hearing Examiner that the concerns expressed by those in opposition are speculative at the moment. Because the required number of parking spaces have been provided, the Council finds that parking is adequate to serve the use. Other requirements of Article 6 may be met at the time of site plan review.

2. *The floating zone plan may provide for additional parking, open space, recreation facilities, screening, or landscaping or further restrict lighting to allow the District Council to make the necessary findings of approval under Section 7.2.1.*

The FZPs do not provide for overflow parking, although possibilities for doing so were presented at the public hearing.

G. Sandy Spring/Ashton Overlay Zone

The development must meet the purpose and development standards of the Silver Spring/Ashton Overlay Zone. The purpose of the Overlay Zone is to (§59-4.9.14.A):

1. *Preserve and enhance the rural village character of the Sandy Spring and Ashton village centers by ensuring an attractive and traditional pattern of houses, commercial establishments, open spaces and their relationship to roadways.*
2. *Encourage a compatible relationship between new or expanded houses or business and traditional neighboring structures that reflects the best of local village character, particularly in terms of scale, siting, design features, and orientation to the site.*

The Council finds that FZP A fulfills the purposes and meets the development standards of the Overlay Zone. The Applicant presented expert testimony that FZP A created a traditional village center with a design that provided open space, active recreation, a sense of community, and formal character that a traditional village center would have. T. 269. The Applicant's expert in architecture testified the mixed-use building design will be compatible in scale and context with the townhouses. T. 108-110. The record includes uncontroverted evidence that the application meets the development standards of the Overlay Zone. Exhibit 23, pp. 25-30.

Conclusion

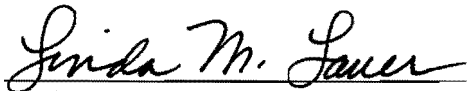
Based on the foregoing analysis, the Hearing Examiner's Report and a review of the entire record, the District Council concludes that the proposed reclassification and development will meet the standards set forth in *2014 Zoning Ordinance* and that it will be consistent with a coordinated and systematic development of the Regional District, as required by the Maryland Land Use Article, Code Ann., § 21-101(a)(4)(i).

ACTION

The County Council for Montgomery County, Maryland, sitting as the District Council for that portion of the Maryland-Washington Regional District located in Montgomery County, Maryland, approves the following resolution:

That Local Map Amendment Application No. H-119, requesting reclassification of five parcels located at 100 Olney Sandy Spring Road, 12 Olney-Sandy Spring Road, and 17825 Porter Road, Sandy Spring, Maryland, in the 8th Election District (Tax Account Numbers 08-00720560, 08-00711190, 08-00720558, 08-00711202, 08-00720718) from the R-90 and CRT C-0.75 R-0.25 H-35 Zones to the TF 10.0 Zone be approved in the amount requested and subject to the specifications and requirements of the Floating Zone Plan A, Exhibit 92(d). The Applicant must submit to the Hearing Examiner for certification a reproducible original and three copies of the Floating Zone Plan approved by the District Council within 10 days of approval.

This is a correct copy of Council action.

A handwritten signature in cursive script, reading "Linda M. Lauer", written in black ink.

Linda M. Lauer, Clerk of the Council